53

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

W.P. No.5596 of 2005

PETITIONER : P.K. Chakraborty
Aged about 52 years
S/o Shri P.C. Chakraborty
R/o Q. No. 116/1, Railway Colony
Durg (Chhattisgarh)

VERSUS

RESPONDENTS

1. Union of India
Through Secretary
Ministry of Railways
Rail Bhawan, New Delhi.
2. Chief Engineer
(Construction)
South Eastern Central Railway
Bilaspur (C.G.)
3. Deputy Chief Personnel Officer
South Eastern Central Railway
Bhuwaneshwar (Orissa)
4. Central Administrative Tribunal
Jabalpur Bench
Through Dy. Registrar C.A.T.
Caravas Buildings Civil Line
Jabalpur (C.G.)

Present: Shri V.G. Tamaskar, learned counsel for the petitioner.
Shri P.S. Koshy, learned Standing Counsel for Railways.

ORAL ORDER
(Passed on 11th August, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

We think that it is appropriate to set out the basic facts *germane* to the decision-making in the first instance. The petitioner was initially appointed as painter on daily-wage basis in the Construction Department of South Eastern Railway. Later, he was promoted as Supervisor Mistry Grade II (Temporary Status) with effect from 01-09-1986 in the pay-scale of Rs. 320-560/- which was subsequently revised to Rs.1200–1800/- with effect from 01-01-1986. When the matter stood thus, vide reference No.

54

C.A.O/CON/SER/Bhuvneshwar/Surplus/04334/233 S.E. Railway, the Office of the Chief Administrative Officer(c) personnel Department BBS, dated 15-06-2001 sought option from the employees for absorption in open line divisions to go on transfer to any other department under respective division of South Eastern Railway. In response to that offer, the petitioner gave his option for transfer and absorption in June 2001. In response to the petitioner's option, the petitioner was transferred to D.R.M. (P) S.E. Railway, Bilaspur as 'Khalasi' vide order dated 07-09-2001. Being aggrieved by the said order and contending that he never held the post of Khalasi during his entire service, the petitioner instituted O.A. No. 343 of 2002 before the Central Administrative Tribunal, Jabalpur Bench (for short "the Tribunal"). A copy of the order made in that application dated 22-07-2004 is produced before use as Annexure P/3 at page 12 of the material papers. We have perused the same. It appears that in that case on behalf of the respondents it was pointed out that the petitioner had already made a representation to the Department with regard to the relief sought by him in the O.A. and they would consider the same. In that view of the matter, the Tribunal disposed of the O.A. Paras 9 and 10 of the order dated 22-07-2004 passed in that O.A. read as follows:

> "9. Before we may part, it is observed that the respondents themselves have stated in their reply that the applicant has already made a representation on 7-9-2001 when is pending consideration and before any decision could be taken, the applicant has filed this OA. In this view of the matter, we direct the respondents to consider the aforesaid representation dated 7-9-2001 of the applicant within a period of two months from the date of communication of this order and communicate the same to the applicant promptly.
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> 10. In the result, the OA is disposed of with the above directions. No costs."

55

(2) After the above order, it appears that the department considered the representation of the petitioner dated 07-09-2001 and rejected the same on 02-12-2004. After rejection of the petitioner's representation dated 07-09-2001, the petitioner filed Contempt Case No. CCP 16/05/1334 before the Tribunal. A copy of the order made by the Tribunal in the Contempt Application is marked as Annexure P/4, produced at page 18 of the material papers. It reads as follows:

"11.5.2005

None for the applicant.

Shri M.N. Banerjee for the respondents.

The learned counsel for the respondents stated that the direction given by the Tribunal on 22nd July, 2004 in OA No. 343/2002 have been complied with. The applicant has admitted this fact in his CCP at para 3 that in pursuance of the direction given by the Tribunal on 22nd July, 2004 had disposed of the representation but it has been disposed of in utter dis-regard to the order of the Tribunal passed in the aforesaid OA on 22.7.2004. We have only directed the respondents to consider and dispose of the representation of the applicant dated 7.9.2001 and the respondents vide letter dated 2.12.2004 (Annexure C-2) have considered and decided the representation of the applicant dated 7.9.2001. Hence, the direction given by the Tribunal have been complied with and this CCP has become infructuous. Accordingly, the CCP is dismissed as infructuous. The notices issued are discharged.

Sd- Sd/-
(A.K. Bhatnagar) (M.P. Singh)
JM VC"

(3) As could be seen from Annexure P/4, it appears that neither the petitioner nor his counsel was present before the Tribunal at the time of hearing. The Tribunal closed the Contempt Case by discharging notice observing that the only direction issued in its order dated 22-07-2004 in OA

(56)

No. 343 of 2002 to the respondents-department was to consider the representation of the petitioner dated 07-09-2001 and since the department has complied with that direction by passing the order dated 02-12-2004, the Contempt Case would not survive for decision on merit and it has become infructuous. This order Annexure P/4 was passed on 11-05-2005. When the matter stood thus, the petitioner filed the present writ petition in this Court on 28-10-2005. The petitioner has prayed for the following reliefs:

> "(I) That, the Hon'ble Court be pleased to call for entire record of O.A. No. 343/2002 and contempt petition no. CCP 16/05/1334 and peruse the same.
>
> (II) That, the Hon'ble Court be pleased to quash para 9 of the order dated 22-07-2004 passed in O.A. 343/2002 ANNEXURE P/3 and ANNEXURE P/5 by issuing a writ of certiorari.
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> (III) That, the respondents 1 to 3 to absorb the petitioner as Supervisory Mistry Grade II in Open Line. w.e.f. 9.08.2001 with all consequential benefit, by issuing a writ of mandamus.
>
> (IV) That, the Hon'ble Court may mould the relief as and when necessary in the interest of justice.
>
> (V) That, the Hon'ble Court be pleased to issue any other writ or writs order or orders direction or directions deemed fit in the interest of justice."

(4) Although, the writ petition is maintainable against the order made by the Tribunal dated 22-07-2004 in O.A. No. 343 of 2002, at this distance of time, we are not inclined to entertain the writ petition. We say this, because, the petitioner if he was aggrieved by the direction issued by the Tribunal in para 9 of the order dated 22-07-2004 in O.A. No. 343 of 2002, without any loss of time, he ought to have made grievance before this Court by filing a writ petition. The petitioner for the reasons best known to him did not complain. On the other hand, the petitioner sat on fence and

(57)

pursued his representation dated 07-09-2001 for decision before the Department, and only when the Department rejected his representation by order dated 02-12-2004, he complied to the Tribunal by filing Contempt Petition. That Contempt Petition was also dismissed as already pointed out *supra* by the Tribunal vide order dated 11-05-2005. The direction issued by the Tribunal in its order dated 22-07-2004 in O.A. No. 343 of 2002 was implemented resulting in an adverse order against the petitioner and therefore, reviewing the correctness of the said direction at this distance of time would not arise. The challenge to order dated 02-12-2004 in the present writ petition is totally misconceived and not maintainable. The claim of the petitioner has been specifically turned down by the order of the Department dated 02-12-2004. If he is aggrieved by that order on any ground, he should first avail of legal remedies before the Tribunal and only in the event of he not getting relief, he can approach this Court under Article 226 of the Constitution in view of the judgment of the Supreme Court in **L. Chandra Kumar Vs. Union of India and others**[1]. The other reliefs sought in this writ petition are consequential to the prayers made in paras (I) & (II) of para 7 of the writ petition. In that view of the matter, we dismiss the writ petition, however, reserving liberty to the petitioner to work out legal remedies before the Tribunal, if he is so advised. We also make it clear that we should not be taken to have expressed any opinion on merit. All the contentions raised by the parties in their respective pleadings are left open to be agitated before the Tribunal for decision-making. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

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1. 1997 (3) SCC 261